

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CR 07-1330 BB

KAREN D. KAYDAHZINNE,

Defendant.

MEMORANDUM OPINION
AND
ORDER DENYING RECONSIDERATION

THIS MATTER is before the Court on Defendant Karen Kaydahzinne's *Motion to Reconsider Suppression of Initial, Pre-Miranda Statements* (Doc. 69). After considering Defendant's memorandum, and being otherwise informed, the Court finds the *Motion* should be Denied.

Discussion

During discovery, defense counsel received an FBI report by Special Agents MacManus and Brotan. This report alleged that on June 4, 2007, when the agents initially arrested Ms. Kaydahzinne, she stated to Agent MacManus, "This is about what happened at the Mescalero, isn't it?" Agent MacManus replied, "Why, what happened at Mescalero?" Agent MacManus had not given a *Miranda* warning to Ms. Kaydahzinne prior to answering her question with a question. Ms. Kaydahzinne

responded, “Look at my nose. He hit my nose. That’s why it happened.” Ms. Kaydahzinne further stated, “I was the one that got assaulted. I don’t use weapons. I know martial arts. I’m an expert in Tae Kwan Do,” and “Did you know it was 7 guys against 3 girls?”

On August 20, 2007, defense counsel filed a Motion to Suppress. The Court held an evidentiary hearing and denied Defendant’s Motion to Suppress. Defendant now files a Motion to Reconsider. The Court remains of the opinion that while Agent MacManus was taking Ms. Kaydahzinne into custody, his response to Ms. Kaydahzinne’s question was not interrogation which required a *Miranda* warning, and anything Ms. Kaydahzinne volunteered, if incriminatory, was voluntary. *United States v. Abdulla*, 294 F.3d 830 (7th Cir. 2002); *United States v. Morton*, 391 F.3d 274, 275 (D.C. Cir. 2004); *Cannady v. Dugger*, 931 F.2d 752, 754 (11th Cir. 1991); *United States v. Marks*, 407 F. Supp. 2d 452 (W.D.N.Y. 2006).

ORDER

For the above stated reasons, Defendant Karen Kaydahzinne’s *Motion to Reconsider* is DENIED.

SO ORDERED this 17th day of September, 2007.



BRUCE D. BLACK
United States District Judge